



## CRS Report for Congress

# The Iran Sanctions Act (ISA)

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### Summary

No firms have been sanctioned under the Iran Sanctions Act (ISA), and a GAO study in December 2007 said that the effects of ISA and other U.S. sanctions on Iran's economy are "difficult to determine." However, with Iran under increasing U.N. and other diplomatic pressure, many foreign firms now seem hesitant to finalize investment deals with Iran. In the 110<sup>th</sup> Congress, several bills, including the House-passed H.R. 1400 would add ISA provisions. See CRS Report RL32048, *Iran: U.S. Concerns and Policy Responses*, by Kenneth Katzman.

### Background and Original Passage

The Iran Sanctions Act (ISA), originally called the Iran-Libya Sanctions Act (ILSA), is one among many U.S. sanctions in place against Iran. It was enacted in a context of tightening U.S. sanctions on Iran, intended to deny Iran the resources to further its nuclear program and to support terrorist organizations such as Hizbollah, Hamas, and Palestine Islamic Jihad. Executive Order 12959 of May 6, 1995, banned U.S. trade with and investment in Iran. Iran's petroleum sector generates about 20% of Iran's GDP, and its onshore oil fields, as well as its oil industry infrastructure, are aging and need substantial investment, and its large natural gas resources (940 trillion cubic feet, exceeded only by Russia) were undeveloped when ISA was first considered. Iran has 136.3 billion barrels of proven oil reserves, the third largest after Saudi Arabia and Canada (according to *Oil and Gas Journal*, January 2007).

In 1995 and 1996, U.S. allies refused to impose sanctions on Iran, and the Clinton Administration and Congress believed that it might be necessary for the United States to try to deter their investment in Iran. The opportunity to do so came in November 1995, when Iran first opened its energy sector to foreign investment. To accommodate its ideology to retain control of its national resources, Iran used a "buy-back" investment program in which foreign firms recoup their investments from the proceeds of oil and gas discoveries but do not receive equity stakes. With input from the Administration, on September 8, 1995, Senator Alfonse D'Amato introduced the "Iran Foreign Oil Sanctions

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Act” to sanction foreign firms’ exports to Iran of energy technology. It passed the Senate on December 18, 1995 (voice vote), but instead sanctioned *investment* in Iran’s energy sector. On December 20, 1995, the Senate passed a version applying the legislation to Libya as well, which was refusing to yield for trial the two intelligence agents suspected in the December 21, 1988, bombing of Pan Am 103. The House passed its version of the bill, H.R. 3107, on June 19, 1996 (415-0), and then concurred on a slightly different Senate version adopted on July 16, 1996 (unanimous consent). It was signed on August 5, 1996 (P.L. 104-172).

**Key Provisions.** ISA requires the President to impose at least *two* out of a menu of seven sanctions on foreign companies (entities, persons) that make an “investment” of more than \$20 million in one year in Iran’s energy sector.<sup>1</sup> The sanctions (Section 6) include (1) denial of Export-Import Bank loans, credits, or credit guarantees for U.S. exports to the sanctioned entity; (2) denial of licenses for the U.S. export of military or militarily-useful technology; (3) denial of U.S. bank loans exceeding \$10 million in one year; (4) if the entity is a financial institution, a prohibition on its service as a primary dealer in U.S. government bonds; and/or a prohibition on its serving as a repository for U.S. government funds (each counts as one sanction); (5) prohibition on U.S. government procurement from the entity; and (6) restriction on imports from the entity, in accordance with the International Emergency Economic Powers Act (IEEPA, 50 U.S.C. 1701). In the original law, the President may waive the sanctions on Iran if the parent country of the violating firm agrees to impose economic sanctions on Iran (Section 4(c)), or if he certifies that doing so is important to the U.S. national interest (Section 9(c)). Application to Iran terminates if Iran ceases its efforts to acquire WMD and is removed from the U.S. list of state sponsors of terrorism. Application to Libya terminated when the President determined on April 23, 2004, that Libya had fulfilled the requirements of all U.N. resolutions on Pan Am 103.

Traditionally skeptical of imposing economic sanctions, European Union states opposed ISA as an extraterritorial application of U.S. law. In April 1997, the United States and the EU agreed to avoid a trade confrontation in the World Trade Organization (WTO) over it and a separate Cuba sanctions law, P.L. 104-114). The agreement contributed to a May 18, 1998, decision by the Clinton Administration to waive ISA sanctions (“national interest” grounds — Section 9(c)) on the first project determined to be in violation — a \$2 billion<sup>2</sup> contract (September 1997) for Total SA of France and its partners, Gazprom of Russia and Petronas of Malaysia to develop phases 2 and 3 of the 25-phase South Pars gas field. The EU pledged to increase cooperation with the United States on non-proliferation and counter-terrorism, and the Administration indicated future

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<sup>1</sup> The definition of “investment” in ISA (Section 14 (9)) includes not only equity and royalty arrangements (including additions to existing investment, as added by P.L. 107-24) but any contract that includes “responsibility for the development of petroleum resources” of Iran, interpreted to include pipelines to or through Iran. The definition excludes sales of technology, goods, or services for such projects, and excludes financing of such purchases. For Libya, the threshold was \$40 million, and sanctionable activity included export to Libya of technology banned by Pan Am 103-related Security Council Resolutions 748 (March 31, 1992) and 883 (November 11, 1993).

<sup>2</sup> Dollar figures for investments in Iran represent public estimates of the amounts investing firms are expected to spend over the life of a project, which might in some cases be several decades.

investments by EU firms in Iran would not be penalized. Total and Petronas subsequently negotiated to develop a liquified natural gas (LNG) export capability at Phase 11 of South Pars, but, on July 12, 2008 Total pulled out on the grounds that investing in Iran at a time of growing international pressure on it over its nuclear program is “too risky.”

ISA was to sunset on August 5, 2001, in a climate of lessening tensions with Iran and Libya. During 1999 and 2000, the Clinton Administration had eased the trade ban on Iran somewhat to try to engage the relatively moderate Iranian President Mohammad Khatemi. In 1999, Libya yielded for trial the Pan Am 103 suspects. However, some maintained that both countries would view its expiration as a concession, and renewal legislation was enacted (P.L. 107-24, August 3, 2001). This law required an Administration report on ISA’s effectiveness within 24 to 30 months of enactment; that report was submitted to Congress in January 2004 and did not recommend that ISA be repealed.

**Iran Freedom and Support Act Modifications.** With U.S. concern about Iran’s nuclear program increasing, ISA was to sunset on August 5, 2006. Members, concerned that foreign companies were ignoring ISA, introduced the “Iran Freedom and Support Act” (H.R. 282, S. 333) to extend ISA indefinitely, to increase the requirements to justify waiving sanctions, to set a 90-day time limit for the Administration to determine whether an investment is a violation (there is no time limit in the original law), and to authorize funding for pro-democracy activists in Iran. H.R. 282 (passed by the House on April 26, 2006 by a vote of 397-21) would also have cut U.S. foreign assistance to countries whose companies violate ISA and applied the U.S. trade ban on Iran to foreign subsidiaries of U.S. companies. After passage of a temporary extension until September 29, 2006 (P.L. 109-267), the Iran Freedom and Support Act version that ultimately passed was H.R. 6198, providing the flexibility demanded by the Administration. It calls for, but does not require, a 180-day time limit for a violation determination; makes sanctionable sales of WMD-useful technology or “destabilizing numbers and types of” advanced conventional weapons; adds a required determination that Iran “poses no significant threat” to terminate application to Iran; changes the multi-lateral sanctions waiver provision (“4(c) waiver,” see above) to a national security interest waiver; and recommends against U.S. nuclear agreements with countries that supply nuclear technology to Iran. It extends ISA until December 31, 2011, formally dropped Libya (changing the name to the Iran Sanctions Act), and contained a provision to expand provisions of the USA Patriot Act (P.L. 107-56) to curb money-laundering for use to further WMD programs. It was passed by the House and Senate by voice vote and unanimous consent, respectively, and was signed on September 30, 2006 (P.L. 109-293).

## Effectiveness and Ongoing Challenges

The Bush Administration argues that, even without actually imposing ISA sanctions, the threat of sanctions, coupled with Iran’s reputedly difficult negotiating behavior, and now compounded by Iran’s growing isolation, is slowing Iran’s energy development. As shown in the table below, some foreign investment has flowed into Iran since the 1998 Total consortium waiver, but some projects are stalled, and other investors, such as Respol and Total, have announced pullouts or declined further investment. Iran’s oil production has not grown – it remains at about 4.1 million barrels per day (mbd) — although it has not fallen either. Some analyses, including by the National Academy of Sciences, say that, partly because of growing domestic consumption, Iranian oil exports are declining to the point where Iran might have

negligible exports of oil by 2015.<sup>3</sup> Others maintain that Iran's gas sector can more than compensate for declining oil exports, although, because investment in the gas sector has been slow and because Iran uses gas to reinject into its oil fields, Iran remains a relatively minor gas exporter. It exports about 3.6 trillion cubic feet of gas, primarily to Turkey. (A GAO study of December 2007, *Iran Sanctions: Impact in Furthering U.S. Objectives Is Unclear and Should Be Reviewed*, GAO-08-58, contains a chart of post-2003 investments in Iran's energy sector, totaling over \$20 billion in investment, but the chart includes petrochemical and refinery projects, as well as projects that do not exceed the \$20 million in one year threshold for ISA sanctionability.)

Some of the projects listed in the table below and in the GAO report may be under review by the State Department (Bureau of Economic Affairs), but no publication of such deals has been placed in the *Federal Register* (Section 5e of ISA), and no determinations of violation have been announced. On the other hand, Undersecretary of State for Political Affairs William Burns testified on July 9, 2008 (House Foreign Affairs Committee) that the Statoil project listed in the table is under review for ISA sanctions; he did not mention any of the others projects. State Department reports to Congress on ISA, required every six months, state that U.S. diplomats raise U.S. policy concerns about Iran with both investing companies and their parent countries.

ISA's definition of "investment" does not include oil or gas purchases from Iran, but does, as interpreted by successive Administrations, include construction of energy routes to or through Iran because such routes help Iran develop its petroleum resources. The Clinton Administration used the threat of ISA sanctions to deter energy routes involving Iran and thereby successfully promoted an alternate route from Azerbaijan (Baku) to Turkey (Ceyhan), which became operational in 2005. No sanctions were imposed on a 1997 project viewed as beneficial to U.S. ally Turkey — a natural gas pipeline from Iran to Turkey, in which each country constructed the pipeline on its side of their border. The State Department had maintained that the project did not violate ISA because Turkey would be importing gas originating in Turkmenistan, not Iran. However, direct Iranian gas exports to Turkey began in 2001, and, as shown in the table, in July 2007 a preliminary agreement between Iran and Turkey would expand that arrangement to transshipment of Iranian gas to Europe, via the Iran-Turkey pipeline.

Construction of oil refineries or petrochemical plants in Iran — included in the referenced GAO report — might also constitute sanctionable projects. Iran has plans to build or expand, possibly with foreign investment, at least eight refineries in an effort to ease gasoline imports that have supply about 30% of Iran's needs. It is not clear whether or not Iranian investments in energy projects in other countries, such as Iranian investment to help build five oil refineries in Asia (China, Indonesia, Malaysia, and Singapore) and in Syria, reported in June 2007, would constitute sanctionable investment under ISA.

A related deal, particularly those involving several Indian firms, is the construction of a gas pipeline from Iran to India, through Pakistan (IPI pipeline). The three governments initially appeared committed to the \$4 billion to \$7 billion project, which would take about three years to complete after work begins, but India did not sign a

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<sup>3</sup> Stern, Roger. "The Iranian Petroleum Crisis and United States National Security," *Proceedings of the National Academy of Sciences of the United States of America*. December 26, 2006.

reported “finalization” of a deal on the project, signed by Iran and Pakistan on November 11, 2007. India resumed discussions on the project following Iranian President Mahmoud Ahmadinejad’s visit to India in April 2008, but India continues to raise concerns on security of the pipeline, the location at which the gas would be officially transferred to India, pricing of the gas, tariffs, and the source in Iran of the gas to be sold. U.S. officials, including Secretary of State Rice, have on several occasions “expressed U.S. concern” about the pipeline deal or have called it “unacceptable,” but no U.S. official has stated outright that it would be sanctioned. Coinciding with the Ahmadinejad visit the Hinduja-ONGC Videsh group won preliminary Iranian approval to take a 45% stake in the large Azadegan oil field project and a 60% stake in South Pars gas field Phase 12.

Another major energy deal with Iran is considered a blow to European solidarity. In March 2008, Switzerland’s EGL utility agreed to buy 194 trillion cubic feet per year of Iranian gas for 25 years, through a Trans-Adriatic Pipeline (TAP) to be built by 2010, a deal valued at at least \$15 billion. The United States criticized the deal as sending the “wrong message” to Iran. However, as testified by Assistant Secretary of State Burns on July 9, 2008, the deal appears to involve only purchase of Iranian gas, not exploration, and likely does not violate ISA.

ISA is one of many mechanisms the United States and its European partners are using to try to squeeze Iran’s economy. U.S. officials are having some success persuading European governments to limit new export credits guarantees to Iran, and to persuade European and other banks not to provide letters of credit for exports to Iran or to process dollar transactions for Iranian banks. Forty banks worldwide have thus far agreed to end their business in Iran, according to the Administration, by many accounts making it more difficult to fund energy industry and other projects in Iran and causing potential investors in the energy sector to hesitate on finalizing pending projects. U.N. Security Council Resolution 1803, adopted March 3, 2008, calls for, but does not require, countries to prohibit financial transactions with Iran’s Bank Melli and Bank Saderat, and the European Union voted in June 2008 to cease transactions with Bank Melli. On October 25, 2007, several major Iranian banks (Saderat, Melli, Mellat, and related banks) were designated by the Bush Administration, along with Revolutionary Guard and Guard business entities, as ineligible to deal with U.S. persons (or banks) under Executive order 13224 (terrorism supporting entities) and Executive order 13382 (proliferation entities).

## **Proposed Further Amendments in the 110<sup>th</sup> Congress**

In the 110<sup>th</sup> Congress, H.R. 1400 contains numerous provisions, some of which pertain to ISA. It passed the House on September 25, 2007 by a vote of 397-16. It would remove the Administration’s ability to waive application of sanctions under ISA under Section 9(c), national interest grounds, but it would not impose on the Administration a time limit to determine whether a project is sanctionable. That bill and several others, including S. 970, S. 3227, H.R. 957 (passed the House on July 31, 2007), and a Senate bill marked up by the Senate Banking Committee on July 17, 2008 (“Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2008) expand the definition of sanctionable entities to official credit guarantee agencies, such as France’s COFACE and Germany’s Hermes. Most of these bills apply ISA sanctions to investment to develop a liquified natural gas (LNG) sector in Iran; it has no LNG export terminals, in part because the technology for such terminals is patented by U.S. firms and unavailable for sale to Iran. These bills would also add financial institutions and insurers to the definition of

sanctionable entities. H.R. 2880 would apply ISA sanctions to sales to Iran of refined petroleum resources after December 31, 2007. Another bill, H.R. 2347, which passed the House on July 31, 2007, would protect from shareholder lawsuits fund managers that divest from firms that have made ISA-sanctionable investments.

### Post-1999 Major Investments in Iran's Energy Sector

(\$20 million + investments in oil and gas fields only; infrastructure projects such refineries, petrochemical plants, not included.)

Date	Field	Company(ies)	Value	Output/Goal
Feb. 1999	Doroud (oil)	Totalfina Elf (France)/ENI (Italy)	\$1 billion	205,000 bpd
Apr. 1999	Balal (oil)	Totalfina Elf/ Bow Valley (Canada)/ENI	\$300 million	40,000 bpd
Nov. 1999	Soroush and Nowruz (oil)	Royal Dutch Shell	\$800 million	190,000 bpd
Apr. 2000	Anaran (oil)	Norsk Hydro (Norway)/Lukoil (Russia)	\$100 million	100,000 (by 2010)
July 2000	Phase 4 and 5, South Pars (gas)	ENI	\$1.9 billion	2 billion cu.ft./day (cfd)
Mar. 2001	Caspian Sea oil exploration	GVA Consultants (Sweden)	\$225 million	?
June 2001	Darkhovin (oil)	ENI	\$1 billion	160,000 bpd
May 2002	Masjid-e-Soleyman (oil)	Sheer Energy (Canada)	\$80 million	25,000 bpd
Sep. 2002	Phase 9 + 10, South Pars (gas)	LG (South Korea)	\$1.6 billion	2 billion cfd
Oct. 2002	Phase 6, 7, 8, South Pars (gas) (est. to begin producing late 08)	Statoil (Norway)	\$2.65 billion	3 billion cfd
Jan. 2004	Azadegan (oil)	Inpex (Japan) 10% stake	\$200 million (Inpex stake)	260,000 bpd
Aug. 2004	Tusan Block	Petrobras (Brazil)	\$34 million	?
Oct. 2004	Yadavaran (oil). Finalized December 9, 2007	Sinopec (China)	\$2 billion	185,000 bpd (by 2011)
June 2006	Gamsar block (oil)	Sinopec (China)	\$20 million	?
Sept. 2006	Khorramabad block (oil)	Norsk Hydro (Norway)	\$49 million	?
Dec. 2007	Golshan and Ferdows onshore and offshore gas fields	SKS Ventures (Malaysia)	\$16 billion	3.4 billion cfd
Totals		\$27.9 billion investment Oil: 1.085 million bpd Gas: 10.4 billion cfd		
Pending Deals/Preliminary Agreements				
Kharg and Bahregansar fields (gas)		IRASCO (Italy)	\$1.6 billion	?
Salkh and Southern Gashku fields (gas). Includes LNG plant (Nov. 2006)		LNG Ltd. (Australia)	?	?
North Pars Gas Field (offshore gas) (Dec. 2006)		China National Offshore Oil Co.	\$16 billion (includes gas purchases)	3.6 billion cu.ft/day
Phase 13, 14 - South Pars (gas);(Feb. 2007). Deadline to finalize: June 2008.		Royal Dutch Shell, Repsol (Spain)	\$4.3 billion	?
Phase 12 - South Pars (gas). Includes building LNG terminal (May 2007)		OMV (Austria)	\$30 billion (inc. gas purchases over 25 years)	?
Phase 22, 23, 24 - South Pars (gas), incl. transport Iranian gas to Europe (July 2007)		Turkish Petroleum Company (TPAO)	\$3 - \$4 billion	2 billion cfd